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22 ANIBAL RODRIGUEZ, SAL CATALDO,  
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 HARVEY, individually and on behalf of all  
 others similarly situated,

23 Plaintiffs,

24 vs.

25 GOOGLE LLC,

Defendant.

Case No.: 3:20-cv-04688

26 **[PROPOSED] ORDER GRANTING  
 PLAINTIFFS' MOTION TO AMEND  
 COMPLAINT**

27 The Honorable Richard Seeborg

## [PROPOSED] ORDER

2 Before the Court is Plaintiffs' Rule 15(a) motion for leave to file their proposed Fourth  
3 Amended Complaint, which amends Plaintiffs' first two proposed classes, which encompass users  
4 who turned off the Web & App Activity ("WAA") and/or supplemental Web & App Activity  
5 ("sWAA") settings, but whose activity on non-Google apps was nonetheless collected and saved  
6 by Google. The Fourth Amended Complaint also adds a third proposed class, which encompasses  
7 users who turned off the WAA setting, but whose [REDACTED]  
8 [REDACTED] was nonetheless saved by Google. Plaintiffs are not seeking to add any new claims, nor  
9 revive any previously dismissed claims.

10        “The court should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P.  
11 15(a)(2). “The Supreme Court has stated that ‘this mandate is to be heeded.’” *Lopez v. Smith*, 203  
12 F.3d 1122, 1130 (9th Cir. 2000) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Similarly,  
13 the Ninth Circuit has “repeatedly stressed that the court must remain guided by the underlying  
14 purpose of Rule 15 . . . to facilitate decision on the merits, rather than on the pleadings or  
15 technicalities.” *Id.* at 1127 (alteration in original). “In short, the policy permitting amendment is  
16 to be applied with extreme liberality.” *Gasperin v. Furniture & Mattress Superstore*, 2009 WL  
17 10710497, at \*1 (N.D. Cal. Oct. 5, 2009) (Seeborg, J.).

18        “The Supreme Court has identified four factors relevant to whether a motion for leave to  
19 amend should be denied: undue delay, bad faith or dilatory motive, futility of amendment, and  
20 prejudice to the opposing party.” *Meaux v. Nw. Airlines, Inc.*, 2006 WL 8459606, at \*1 (N.D. Cal.  
21 July 17, 2006) (citing *Foman*, 371 U.S. at 182). “As this circuit and others have held, it is the  
22 consideration of prejudice to the opposing party that carries the greatest weight.” *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *DCD Programs, Ltd. v. Leighton*,  
23 833 F.2d 183, 185 (9th Cir. 1987)). “Absent prejudice, or a strong showing of any of the remaining  
24 *Foman* factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend.”  
25 *Id.* (emphasis in original). As “[t]he non-moving party[, Google] bears the burden of demonstrating  
26 why leave to amend should not be granted.” *Clayborne v. Chevron Corp.*, 2020 WL 11563087, at  
27

1 \*1 (N.D. Cal. Dec. 2, 2020) (citing *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074,  
2 1079 (9th Cir. 1990)).

3 Google cannot meet its heavy burden to show why leave should be denied. Plaintiffs'  
4 proposed amendments to the first two classes merely conform the class definitions to the evidence  
5 produced in discovery, and Plaintiffs do not seek to serve new discovery nor extend the case  
6 deadlines on the basis of these amendments.

7 Based on what discovery has revealed, Plaintiffs also seek to add a third class relating to  
8 [REDACTED] “in the interest of reaching a proper decision on the merits,” and Google will not  
9 be substantially prejudiced by additional discovery relating to the manner in which Google saves  
10 and uses WAA-off [REDACTED] data. *Pinterest, Inc. v. Pintrips, Inc.*, 2014 WL 12611300, at \*1 (N.D.  
11 Cal. Aug. 26, 2014) (Seeborg, J.). Nor has Google established that Plaintiffs are guilty of undue  
12 delay or bad faith, or that amendment would be futile.

13 Plaintiffs’ motion for leave to amend is therefore **GRANTED**. Plaintiffs’ Fourth Amended  
14 Complaint, filed with their motion for leave to amend, is now deemed filed.

15 **IT IS SO ORDERED.**

16  
17 DATED: \_\_\_\_\_

18 Honorable Richard Seeborg  
19 Chief United States District Judge  
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